CAROLINE HUNT TRUST ESTATE ET AL.
(ON RECONSIDERATION)

IBLA 82-246 Decided January 10, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, denying approval of assignment of geothermal resource leases. U 25340 et al.

Set aside and remanded.

1. Geothermal Leases: Acreage Limitations

A denial of approval of assignments of geothermal leases will be set aside and the cases remanded to BLM for reevaluation and recalculation of the acreage chargeable to the parties involved when it is not clear from the record whether appellants have properly been charged with their proportionate share of acreage of leases to be held in common as per the regulations in 43 CFR 3201, and whether this acreage exceeds the maximum allowable acreage of 20,480 acres for any one lessee when considered in conjunction with their chargeable acreage in other outstanding leases.

APPEARANCES: Meg Ackerman, land representative, Caroline Hunt Estate, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The Caroline Hunt Trust Estate, Caroline L. Hunt, Nancy B. Hunt, and Norma K. Hunt have appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated November 12, 1981, which denied approval of assignments to them of several geothermal resource leases. 1/ BLM did not

1/ The BLM decision denied approval of assignments of 11 leases:

U-25340	U-46515 *	U-46519 *
U-35247	U-46516 *	U-46520 *
U-35248	U-46517	U-46521 *
U-46514 *	U-46518	

Appellants have only filed an appeal concerning the six starred cases, contending BLM has erroneously grouped these six cases with leases to be

approve these assignments indicating that such approval would result in these parties exceeding the maximum acreage limitation of 20,480 acres for geothermal resource leases as specified in the law for any one lessee. 43 CFR 3201.2(b)(2).

BLM specifically found that these parties would exceed the acreage limitation (43 CFR 3201.2(a)) stating that:

> Caroline L. Hunt, the Caroline Hunt Trust Estate, Nancy B. Hunt and Norma K. Hunt hold in common twenty five geothermal resources leases in the state of Utah which aggregated 46,966.99 acres of land. Each lease is held forty percent by Caroline L. Hunt and twenty percent by the other three parties. In addition to these leases already held by the subject parties assignments of leases U-25340, U-25347, U-35248, and U-46514 through U-46521 are pending approval. We have been notified by the U.S. Geological Survey that none of this acreage is excepted.

In this statement of reasons 2/ appellants contend that approval of these assignments would not violate the regulations.

Appellants allege that:

> None of the three investors involved with these leases has, after totaling their allocated share of all lease acreage, exceeded the statutory acreage limitation.
>
> The investment group consisting of Caroline Hunt Trust Estate, Nancy B. Hunt and Norma K. Hunt holds a total of 5,669.60 acres in common. The same investment group will hold 19,612.44 acres in common if these leases are approved. The individual members of this investment group hold, or will hold if the leases in question are assigned to them, the following totals on an allocated basis:

Caroline Hunt Trust Estate	15,310.257 acres
Nancy B. Hunt	15,310.256 acres
Norma K. Hunt	15,310.256 acres

[1] The regulations, at 43 CFR 3201.2(a) issued pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. §§ 1001-1025 (1976)) set forth in pertinent part the acreage limitations for geothermal leasing:

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assigned to an investment group consisting of Caroline L. Hunt, Caroline Hunt Trust Estate, Nancy B. Hunt, and Norma K. Hunt. For the purposes of our consideration we have treated the appeal as to all 11 cases.

2/ Appellants' appeal was originally summarily dismissed by order of this Board dated Jan. 28, 1982, for failure to timely file a statement of reasons. Appellants have submitted sufficient evidence of a registered mail receipt from the Board to show that the statement of reasons was, in fact, timely filed with the Board on Dec. 28, 1981. Accordingly, we hereby vacate our order and proceed to consider the appeal on its merits.

> (a) Maximum holdings. No citizen, association, corporation, or governmental unit shall take, hold, own, or control at one time, whether acquired directly from the Secretary or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding 20,480 acres, including leases acquired under the provisions of section 4(a)-(f) of the Act.

As BLM correctly pointed out the regulations further provided at 43 CFR 3201.2(b)(2): "Lessees holding acreage in common shall be considered a single entity and cannot hold acreage in excess of the maximum specified in the law for any one lessee." The purpose of this section of the regulations is to make it clear that groups holding leases in common may not gain any advantage by means of their association and may not hold any more acreage in a group than allowed by the law (i.e., 20,480 acres) for any one individual lessee. It does not follow, however, that each individual in the group must be charged with the full acreage of the lease. Each individual in the group is properly chargeable with his or her proportionate share of the group's acreage, and that acreage when taken together with other outstanding accountable acreage may not exceed the maximum limitation for an individual lessee. See generally Instruction Memorandum No. 82-131 (Dec. 9, 1981).

We note that there may be certain circumstances where the entire acreage is chargeable to one member of the group, while the remaining members, are also attributed with their proportionate share. In Arjay Oil Co., 30 IBLA 212, 214 (1977), where oil and gas lease offers were held in a single name while another party admittedly held a 50 percent interest in the offers, the Board examined the acreage limitations for oil an gas leasing under the statute and the regulations. We noted that the record title holder of a lease is charged with the entire acreage in a lease whether its interest is entire or partial or whether it is direct or indirect. Columbia Carbon Co., 68 I.D. 314, 319 (1961). At the same time, the other party in interest was still chargeable for his proportionate interest in the offers. This same interpretation would apparently hold true for geothermal leases. 3/

In the case at hand, we are unable to determine from the record before us the exact maximum acreage attributable to each party involved in the proposed assignments. We are unable to verify whether, in fact, each appellant has properly been charged with only their proportionate share of outstanding lease acreage. Nor can we determine how record title of these cited leases reflect the respective interests of these appellants. As indicated

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3/ The language of the applicable regulation, 43 CFR 3201.2(b), is almost a verbatim replication of the language construed in Arjay Oil Co., supra, and Columbia Carbon Co., supra. Moreover, this Board has recognized the similarity between the geothermal leasing statute and regulations and those pertaining to oil and gas leasing. Hassie Hunt Exploration Co., 46 IBLA 161, 162 (1980). We have held that in enacting the geothermal leasing statute Congress must have been aware of the interpretations placed by this Department on similar provisions under the oil and gas leasing statute. Hydrothermal Energy and Minerals, Inc., 18 IBLA 393, 401 (1975). In addition, we have noted that the Department's oil and gas leasing regulations served as a model for the geothermal leasing regulations. California Geothermal, Inc., 19 IBLA 268, 271 (1975); E&H Investments, Inc., 19 IBLA 141, 142 (1975).

above, if any one person is listed as the sole record title holder of these leases, while others are listed as parties in interest, the record title-holder is chargeable with the full acreage for that lease and thus, it is possible that one of the appellants may have exceeded the maximum allowable acreage.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we hereby set aside the State Office decision and remand these cases for reevaluation and recalculation of the acreage accountable for each party involved in the proposed assignments. This acreage is then to be considered in conjunction with their accountable acreages for existing leases within the guidelines of the law and the regulations to determine if any party will exceed the maximum acreage if the assignments in question are approved.

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James L. Burski
Administrative Judge

We concur:

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Anne Poindexter Lewis
Administrative Judge

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Gail M. Frazier
Administrative Judge